Executive Summary
Direct Investigation Operation Report

Enforcement by Planning Department and Lands Department against Unauthorised Land Developments

Introduction

Land is a valuable resource of society. While ensuring prudent planning of land use for community development, the Government is duty bound to combat unauthorised developments rigorously to safeguard the environment. Pursuant to the Town Planning Ordinance ("TPO"), the Planning Department ("PlanD") is empowered to take enforcement action against unauthorised developments within a development permission area ("DPA") in the rural New Territories. The Lands Department ("LandsD") also plays an enforcement role in cases involving unlawful occupation of government land or breaches of lease conditions of private land.

2. For many years, the TPO had not empowered PlanD to take enforcement action in rural areas not previously covered by DPAs. With the amended TPO coming into effect on 1 September 2023, the Secretary for Development may designate rural areas in the New Territories with ecological value, which are subject to development pressure and risks of environmental degradation, to be "regulated areas", so as to plug the loophole by enabling PlanD's enforcement action against unauthorised developments in such areas.

3. It is no doubt the Government's duty to tackle unauthorised developments rigorously, but lease control and law enforcement are only remedial measures. To prevent irregularities effectively, publicity and education are indispensable. To this end, PlanD has in recent years taken different measures to enhance private land owners' understanding of their obligations and its stringent enforcement. PlanD has also made continuous efforts to promote public awareness and enlist their support for its work.

4. In this direct investigation operation, we have scrutinised the enforcement by PlanD and LandsD against unauthorised developments, including their ambit and demarcation of responsibilities, handling of complaints and unauthorised development cases, as well as inter-departmental collaboration.

5. On the whole, we consider PlanD and LandsD to have handled unauthorised development cases according to their purview and statutory powers, but there is still room for improvement regarding enforcement procedures and intensity. We are pleased to note that after the launch of this direct investigation operation, PlanD and LandsD have responded positively to our observations and opinions on inter-departmental collaboration. Our comments on the work of the two departments are detailed below.

Our Findings and Comments

PlanD's Enforcement Work

6. Currently, PlanD's Enforcement Section identifies unauthorised development cases through handling complaints and proactive inspections. If unauthorised development cases are confirmed by the Enforcement Section's investigation, PlanD would, having regard to the actual situation and after endorsement by its internal District Enforcement Conference ("DEC")[1], issue three types of statutory notices (namely the Enforcement Notice, Stop Notice and Reinstatement Notice) under the TPO to the land owners, occupiers or responsible persons requiring rectification. The notices will be registered in the Land Registry.

7. Between 2018 and 2023, PlanD identified a total of 2,549 unauthorised development cases with a downward trend from 522 cases in 2018 to 367 cases in 2023, representing a decrease of almost 30%. On average, PlanD could identify unauthorised development cases in around 67% of proactive inspections each year, far higher than the rate of around 15% through complaint investigation, indicating that both its large-scale screening inspections of DPAs and inspections targeting specific sites were effective for monitoring irregularities. Moreover, the majority of statutory notices issued by PlanD had been complied with. The annual compliance rate ranged from 69% to 88% during the above period, reflecting the deterrent effect of existing enforcement measures against most offenders.

8. For the remaining cases of non-compliance with statutory notices, PlanD would make assessment for the sake of prosecution. Among the cases where the statutory notices lapsed without compliance, only a tiny minority of them averaging only 1.2% between 2018 and 2022 were not prosecuted. Between 2018 and 2023, the PlanD instigated prosecutions in a total of 475 cases of unauthorised development, among which 65 involved repeated prosecutions.

9. Two cases of repeated prosecutions that we have examined involved unauthorised use of private land for storage and car parking. The breaches involved were easy to rectify or prone to recur. The offenders in both cases had complied with the Enforcement Notices issued by PlanD but regressed to unauthorised land use subsequently. In accordance with the prevailing procedures, PlanD shortened the compliance period of the second and subsequent Enforcement Notices from the normal three months to one month. The respective land owners were repeatedly prosecuted for non-compliance with the Enforcement Notice and ultimately convicted and fined by the court.

10. We recognise that shortening the compliance period of statutory notices could expedite the handling of cases involving repeated breaches. According to its current practice, PlanD would, depending on the extent of spatial overlap between the present

---

[1] The DEC is chaired by PlanD's Assistant Director with Chief Town Planners, Senior Town Planners and Town Planners as members.

and previous cases and whether the unauthorised development recurred within one year, shorten the compliance period to a minimum of one month. However, it might not be sufficient to deter some repeated offenders by considering whether the unauthorised development recurred within one year alone. In a particular case, the respective land owners undertook the same unauthorised development thrice within a couple of years. The breaches were obviously intentional. We recommend that regarding repeated cases in breach of the TPO, PlanD should explore considering more factors in setting the timeframe for compliance with statutory notices and progressively shortening the timeframe upon subsequent breaches, so as to raise offenders' costs of non-compliance proportionately.

11. PlanD's information revealed that the average processing time for unauthorised development cases (i.e. from confirming the unauthorised development, issuing statutory notices to instigating prosecution) decreased from 17 months in 2018 to 14 months in 2023, indicating its enhanced efficiency. Following the inclusion of more sites in DPAs and the newly-added "regulated areas" as designated by the Secretary for Development under the amended TPO, the scope of land under PlanD's enforcement purview is expected to expand continuously. We are pleased to note that to expedite the handling of unauthorised development cases, PlanD has revised its enforcement procedures by reducing the number of compliance inspections after issuance of the statutory notices and shortening the interval between inspections.

12. Nevertheless, the total manpower of the two sections responsible for handling unauthorised development cases (namely Enforcement Section and Prosecution Section) under PlanD has shrunk in recent years. The gap between the staff establishment and the actual strength of these two sections has also continued to widen. We reckon that PlanD should keep under review the existing manpower condition and fill vacancies through internal redeployment where necessary to cope with the heavy enforcement work.

13. We have also found room for improvement in PlanD's handling of cases with change in land ownership. PlanD should draw up guidelines on the procedures and target timeframe for handling unauthorised development cases involving a change in ownership for periodic circulation to staff to avoid omission of necessary action.

14. Separately, some of the public opinions reaching us showed that the requirements specified by PlanD in Reinstatement Notices were considered inadequate to restore the damaged ecological habitat completely. PlanD explained that, depending on the actual circumstances, it would consider the requirements for reinstatement in accordance with the principle under section 23(3) of the TPO. Where necessary, the department would seek professional advice from other departments like the Agriculture, Fisheries and Conservation Department ("AFCD") to ensure that the notices issued can balance the statutory requirements and the need for conservation. Having enquired with AFCD, we learned that PlanD had sought its professional advice in various cases in the past. AFCD also remarked that the way to restore a damaged habitat varies from case to case, depending on the location, scope and surroundings of the site. According

to AFCD’s professional advice, by replanting vegetation (including grass) on a site after removing the waste or fill materials (such as construction waste) not originally existing thereon or directly filling the site with soil, the damaged habitat could be gradually restored to its former condition by natural succession.

15. We notice that pursuant to the TPO, a Reinstatement Notice may require reinstatement of the land to the condition it was in upon the gazettal of the DPA plan or, where appropriate, to any other condition more favourable to the notice recipient that the Planning Authority considers satisfactory. We accept that in drawing up the requirements in statutory notices, PlanD should have regard to numerous factors such as the statutory requirements, the nature of the case and the need for environmental protection. Nevertheless, the term “Reinstatement Notice” may easily give the public a misconception that the notice recipient would be obliged to fully reinstate the site to its former landscape or condition. As such, we recommend that PlanD step up explaining the basics of Reinstatement Notice through such publicity channels as official website to promote public awareness of its enforcement measures and avoid misunderstanding.

16. At the same time, we reckon that PlanD should step up education and publicity to enhance private land owners’ understanding of their obligations, the damage caused by unauthorised developments to the environment, the enforcement role of the department, the price to be paid by offenders and the essential features of the TPO, so as to raise law-bidding awareness.

LandsD’s Enforcement Work

17. LandsD enforces against unauthorised development cases from the perspectives of unlawful occupation of government land or breaches of lease conditions of private land. In respect of private land, a vast majority of unauthorised development cases involve private agricultural land. There is generally no restriction on the land use. However, except squatter structures surveyed in 1982 or with prior permission, it is a breach of lease conditions to erect any structures on agricultural land, against which LandsD may take lease enforcement action.

18. In relation to unlawful occupation of government land, LandsD would, upon confirmation of irregularities after investigation, post a statutory notice pursuant to section 6(1) of the Land (Miscellaneous Provisions) Ordinance (“LMPO”) on site requiring the occupation to cease before the specified date; otherwise, LandsD would take further action including demolishing and taking possession of any property and structure on the land, as well as considering prosecution. Given the vast number of cases involving unlawful occupation of government land received each year, LandsD has drawn up guidelines to prioritise cases under a risk-based approach having regard to the gross area of the site, its planned use and the severity of breaches.

19. Our investigation revealed that for cases of unlawful occupation of government land involving both priority and non-priority circumstances, LandsD’s existing

guidelines were unclear about how the case should be classified as a whole. We recommend that LandsD comprehensively review its existing guidelines and specify clearly the various factors for determining whether a case falls within the priority category, supplemented with real cases to illustrate how to assess cases, for compliance by staff. LandsD should also put in place a monitoring mechanism to ensure proper prioritisation of different cases by staff.

20. On the other hand, a case showed LandsD's failure in timely completion of a priority case involving unlawful occupation of government land. LandsD should step up training to ensure the staff clearly understand the enforcement role of the department and take timely action against non-compliance with the law and lease conditions according to its performance indicators. We also notice that each year LandsD has to handle a large number of cases involving unlawful occupation of government land and breaches of lease conditions. In this light, LandsD should in parallel review its existing manpower and examine the need for redeployment or even additional resources having regard to the actual situation to cope with the enforcement work.

Inter-departmental Collaboration between PlanD and LandsD

21. PlanD and LandsD handle unauthorised development cases in accordance with their respective purview and powers. Currently, PlanD refers unauthorised development cases involving mostly or only government land to LandsD for further action. We understand that a pre-requisite for enforcement by PlanD is that the identity of the land owner, occupier or responsible person of the site in question could be confirmed so that a statutory notice may be issued. As for cases of unlawful occupation of government land, however, it is more difficult to confirm the identity of the occupier or responsible person. Hence, a more practicable way is for such cases to be handled by LandsD under the LMPO by posting a statutory notice and then demolishing and taking possession of any property and structure on the land.

22. We noticed that during the initial stage of this direct investigation operation, there was indeed room for enhancement in the efficiency of the collaboration between PlanD and LandsD. We are pleased to note that upon our coordination, both departments were receptive to our observations and opinions and strived to further strengthen their collaboration. PlanD and LandsD have since established a joint working group co-led by their deputy directors. The first meeting of the working group was held in March 2024. The two departments have also introduced a pilot scheme with two large-scale unauthorised developments involving private agricultural land selected for joint enforcement operations. The positive attitude of these two departments in taking improvement measures is commendable. We expect them to make use of the newly-established high-level communication platform to reinforce their collaboration thereby bringing synergy effect to their enforcement work.

23. As the joint working group has just been established, we recommend PlanD and LandsD to consider drawing up a mechanism and timetable for timely review of the joint working group's guiding direction and the effectiveness of the pilot scheme on joint

enforcement operations, thereby ensuring that the new measures can serve the purpose of enhancing inter-departmental collaboration.

24. Moreover, there is room for improvement in the maintenance of data on inter-departmental collaboration by PlanD and LandsD. The two departments should respectively review the data they maintained on inter-departmental unauthorised development cases and enforcement action, and discuss any need to incorporate more data items, thereby providing a more precise and comprehensive basis for monitoring and analysing enforcement work.

25. Taking a step further, PlanD and LandsD should consider establishing a database for unauthorised development cases to facilitate inter-departmental intelligence sharing and enforcement. The two departments may make use of the database to formulate targeted measures for high-risk sites having regard to such factors as the severity of breaches and whether repeated breaches are involved, so as to nip problems in the bud.

26. With the amended TPO coming into effect in September 2023, PlanD is empowered to take enforcement action against unauthorised developments within "regulated areas". In light of the continuous increase in the area of land under regulation, PlanD and LandsD should review the enforcement and case referral procedures in a timely manner and explore room for further streamlining and consolidation, so as to optimise the use of resources for coping with an anticipated increase in enforcement work.

27. Looking ahead, as the current-term Government proactively implements various land development projects, land use in the rural New Territories would undergo vast changes. Unauthorised developments may differ in mode, scale, etc. PlanD and LandsD as the enforcement authorities should conduct a systemic review after the implementation of the various improvement measures. The two departments should also adapt to the circumstances, continuously deepen reform and innovate, as well as improve the operational mechanism and collaboration to strengthen the ability to prevent and handle unauthorised developments.

Recommendations

28. In light of the above, The Ombudsman has made the following recommendations to PlanD and LandsD:

PlanD

(1) regarding cases involving repeated breaches of the TPO, explore considering more factors (including the total number of breaches committed by the offender, the gross area of the site, the nature of irregularities and the impact on environmental hygiene) in setting the

timeframe for compliance with statutory notices and progressively shortening the timeframe upon subsequent breaches, so as to raise offenders' costs of non-compliance proportionately;

(2) review the manpower for handling unauthorised development cases and fill vacancies through internal redeployment where necessary to cope with the enforcement work;

(3) draw up guidelines on the procedures and target timeframe for handling unauthorised development cases involving a change in ownership for periodic circulation to staff to avoid omission of necessary action;

(4) to step up explaining the basics of Reinstatement Notice through such publicity channels as official website to promote public awareness of its enforcement measures and avoid misunderstanding;

(5) step up education and publicity to enhance private land owners' understanding of their obligations, the damage caused by unauthorised developments to the environment, the enforcement role of the department, the price to be paid by offenders and the essential features of the TPO, so as to raise law-bidding awareness;

LandsD

(6) comprehensively review its existing guidelines and specify clearly the various factors for determining whether a case falls within the priority category, supplemented with real cases to illustrate how to assess cases involving both priority and non-priority circumstances, for compliance by staff;

(7) put in place a monitoring mechanism to ensure proper prioritisation of different cases by staff;

(8) step up training to ensure the staff clearly understand the enforcement role of the department and take timely action against non-compliance with the law and lease conditions according to its performance indicators;

(9) review its existing manpower and examine the need for staff redeployment or additional resources having regard to the actual circumstances to cope with the enforcement work;

PlanD and LandsD (Inter-departmental Collaboration)

(10) consider drawing up a mechanism and timetable for timely review of the joint working group's guiding direction thereby ensuring that the new measures can serve the purpose of enhancing inter-departmental

collaboration;

(11) conduct timely review of the effectiveness of the pilot scheme on joint enforcement operations;

(12) respectively review the current data on inter-departmental unauthorised development cases and enforcement action, and discuss any need to incorporate more data items, thereby providing a more precise and comprehensive basis for monitoring and analysing enforcement work;

(13) consider establishing a database for unauthorised development cases with such information as the identity of offenders, subject locations, irregularities and results of follow-up action, thereby facilitating inter-departmental intelligence sharing and enforcement;

(14) making use of the above newly established database, formulate targeted measures for high-risk sites having regard to such factors as the severity of breaches and whether repeated breaches are involved, so as to nip problems in the bud;

(15) review the enforcement and case referral procedures in a timely manner and explore room for further streamlining and consolidation, so as to optimise the use of resources for coping with an anticipated increase in enforcement work; and

(16) conduct a systemic review after the implementation of the various improvement measures. The two departments should also adapt to the circumstances, continuously deepen reform and innovate, as well as improve the operational mechanism and collaboration to strengthen the ability to prevent and handle unauthorised developments.

Office of The Ombudsman
October 2024

We will post the case summary of selected investigation reports on social media from time to time. Follow us on Facebook and Instagram to get the latest updates.

Facebook.com/Ombudsman.HK **Instagram.com/Ombudsman_HK**